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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DIAMOND CONCRETE, LLC, a
10 Washington corporation; ROBERT
11 EDWARD DIAMOND JR., individually;
12 RAIN CITY CONTRACTORS, INC., a
13 Washington corporation; and KEN
14 PEARSON and SHARON PEARSON,
15 husband and wife,

16 Plaintiffs,

17 v.

18 PACIFIC NORTHWEST REGIONAL
19 COUNCIL OF CARPENTERS; JIMMY
20 MATTA, individually and as
21 representative of the Regional Council;
22 JIMMY HUAN, individually and as
23 representative of the Regional Council;
24 BEN BASOM, individually and as
25 representative of the Regional Council;
26 and DOES 1-50,

27 Defendants.

CASE NO. C11-5360BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
STRIKE/DISMISS

28 This matter comes before the Court on Defendants' special motion to
strike/dismiss Plaintiffs' eighth cause of action, abuse of administrative process (Dkt. 16).
The Court has reviewed the briefs filed in support of and in opposition to the motion and
the remainder of the file and hereby grants Defendants' motion as discussed stated herein.

I. FACTUAL AND PROCEDURAL HISTORY

This matter arises out of Plaintiffs' dispute with a labor union. *See generally* Dkt. 1
(Complaint). On May 10, 2011, Plaintiffs commenced this action and included within

1 their complaint a claim for abuse of administrative process. Complaint ¶¶ 112-116
2 (Plaintiffs' eighth cause of action). On June 7, 2011, Defendants moved to strike or
3 dismiss Plaintiffs' eighth cause of action. Dkt. 16. On June 27, 2011, Plaintiffs responded
4 in opposition to Defendants' motion to strike/dismiss. Dkt. 21. On July 1, 2011,
5 Defendants replied. Dkt. 24.

6 **II. DISCUSSION**

7 Defendants move the Court to dismiss/strike Plaintiffs' eighth cause of action
8 (abuse of administrative process) on the basis that (a) such a claim is not recognized in
9 Washington or (b) that they are immune from suit on the underlying facts pursuant to
10 RCW 4.24.510 (Washington's Anti-SLAPP provision).

11 Plaintiffs have based their eighth cause of action to a single complaint made by
12 Defendants with the National Labor Relations Board ("NLRB"). Dkt. 21 at 2
13 (Defendants' "March 2011 NLRB charge against the [P]laintiffs . . . is the basis of
14 [P]laintiffs' eighth cause of action."). That being the case, the Court equally confines
15 Defendants' motion to strike/dismiss to the March 2011 NLRB complaint.
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17 With this understanding of Plaintiffs' eighth cause of action, the Court now turns
18 to Defendants' motion.

19 **A. 12(b)(6)**

20 Under the Federal Rules of Civil Procedure (Fed. R. Civ. P.), a motion to dismiss
21 is proper when a party asserts a claim for which no set of facts can be pleaded on which
22 relief can be granted. Fed. R. Civ. P. 12(b)(6). Defendants argue that Plaintiffs' eighth
23 cause of action is such a claim.

24 Defendants argue and Plaintiffs concede that no tort exists under Washington law
25 for abuse of process when the underlying facts pertain to a complaint made to an agency.
26 *Compare* Dkts. 16 and 24 with 21; *see also Sea-Pac Co. v. United Food & Commercial*
27 *Workers Local Union 44*, 103 Wn.2d 800, 806-807 (1985) (citing *Fite v. Lee*, 11 Wn.
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1 App. 21, 27 (1974) (holding that a complaint to an agency does not constitute process
2 issued in a Washington Court; “therefore there is no abuse of process. Whether the Union
3 used the process of the Board for an improper purpose is for the Board to decide.”)). *Sea-*
4 *Pac*, if applied, would operate to prevent Plaintiffs from filing an abuse of process claim
5 against Defendants based on a complaint they made to the NLRB.

6 In opposition, Plaintiffs contend that they are seeking relief based on the tort of
7 abuse of administrative proceedings and not, as Defendants contend, on the separate tort
8 of abuse of process. *See* Dkt 21 (citing Restatement 2d of Torts § 680 (outlining the
9 elements of an abuse of administrative proceedings claim)). However, as Plaintiffs
10 concede no court in Washington has adopted such a tort. Plaintiffs do provide some case
11 law from other jurisdictions to support their request for this Court to adopt the
12 Restatement 2d of Torts § 680 in order to provide for such a cause of action.

13
14 However, the Court is not persuaded by Plaintiffs’ analysis of the issue and
15 declines to adopt such a rule for Washington courts. In so declining, Plaintiffs’ eighth
16 cause of action is one for which relief does not exist.

17 Therefore, the Court grants Defendants’ motion to dismiss Plaintiffs’ eighth cause
18 of action. *See* Fed. R. Civ. P. 12(b)(6).

19 **B. Anti-SLAPP**

20 Alternatively, Defendants argue that they are immune from liability for Plaintiffs’
21 eighth cause of action pursuant to Washington’s Anti-SLAPP statute, RCW 4.24.510. The
22 Anti-SLAPP statute provides in pertinent part:

23 A person who communicates a complaint or information to any
24 branch or agency of federal, state, or local government, . . . is immune from
25 civil liability for claims based upon the communication to the agency or
26 organization regarding any matter reasonably of concern to that agency or
27 organization A person prevailing upon the defense provided for in this
28 section is entitled to recover expenses and reasonable attorneys’ fees
incurred in establishing the defense and in addition shall receive statutory
damages of ten thousand dollars. Statutory damages may be denied if the

1 court finds that the complaint or information was communicated in bad
2 faith.

3 RCW 4.24.510.

4 The parties initially dispute whether Defendant Pacific Northwest Regional
5 Council of Carpenters (“Regional Council”) is considered a “person” for purposes of the
6 Anti-SLAPP statute. To support its position that Regional Council is not a “person”
7 under RCW 4.24.510, Plaintiffs cite to *Segaline v. Dep’t of Labor & Indus.*, 169 Wn.2d
8 467 (2010). However, as Defendants correctly point out, *Segaline’s* holding is limited to
9 governmental agencies, not non governmental organizations like Regional Council.
10 Indeed the *Segaline* court noted that “in *Skimming v. Boxer*, 119 Wn. App. 748, 758
11 (2004), [the Court of Appeals] correctly held RCW 4.24.510 granted immunity *only* to ‘a
12 non government individual *or organization*.’”

13 Plaintiffs next argue that if Regional Council qualifies as a person, Defendants
14 should not prevail on their Anti-SLAPP defense because their complaint was frivolous.
15 However, contrary to Plaintiffs’ arguments about the merit of Regional Council’s
16 complaint to the NLRB, whether the complaint was filed in good faith or bad faith or is
17 otherwise frivolous is irrelevant to the question of whether they qualify for immunity
18 under the Anti-SLAPP statute. *See DiBiasi v. Starbucks, Corp.* 414 Fed. Appx. 948, 950
19 (2011) (holding that immunity is not dependant on a finding of good or bad faith filing
20 with an agency). Therefore, applying RCW 4.24.510 here, Regional Council is entitled
21 to immunity under the Anti-SLAPP statute because it is a non governmental agency that
22 filed a complaint that was a matter reasonably of concern for the NLRB.

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24 As Defendants point out, the Anti-SLAPP statute awards a party prevailing on
25 such a defense with fees, costs, and statutory damages of ten thousand dollars. *See* RCW
26 4.24.510. However, the final clause of the Anti-SLAPP statute reads in pertinent part as
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1 follows: “Statutory damages may be denied if the court finds that the complaint or
2 information was communicated in bad faith.”

3 Plaintiffs argue that Defendants’ complaint to the agency was frivolous and
4 without merit. It is undisputed that Defendants filed a complaint seeking injunctive relief
5 to prevent Plaintiffs from filing the instant lawsuit against Defendants. Defendants
6 ultimately withdrew the complaint before it was decided by the NLRB and proceeded to
7 defend in this law suit. Plaintiffs argue that Defendants’ complaint was improper because
8 the NLRB does not have the power to enjoin a lawsuit.

9 In opposition, Defendants argue that the opposite is true and support their position
10 by citing to *Small ex rel. NLRB v. Operative Plasterers’ & Cement Masons’ Int’l Ass’n*
11 *Local 200, AFL-CIO*, 611 F.3d 483, 491-92 (9th Cir. 2010). However, Defendants
12 citation to *Small* is misplaced and misleading. In *Small* the Ninth Circuit expressly stated
13 in pertinent part as follows: “In the NLRA context, the Supreme Court has explained that
14 ‘[t]he filing and prosecution of a well-founded lawsuit may not be enjoined as an unfair
15 labor practice.’” *Id.* The *Small* court went on to discuss that the NLRB does have the
16 power to enjoin a law suit that “has an objective that is illegal[.]” *Id.*


17 Defendants have not provided the Court with competent evidence or adequate
18 argument that Plaintiffs’ lawsuit is brought with an illegal objective, which leaves the
19 NLRB powerless to enjoin Plaintiffs’ suit against Defendants. This lends credence to
20 Plaintiffs’ contention that Regional Council’s complaint to the NLRB was frivolous.
21 Further the Court is well aware of Defendants’ counsel’s legal resources and abilities to
22 understand and interpret statutes and case law. Defendants were or should have been
23 well aware of the fact that Regional Council’s complaint to the NLRB was asking the
24 agency to exercise a power it did not have, which makes the filing of one in bad faith.
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1 Therefore, although Defendants are immune from liability based on Plaintiffs'
2 eighth cause of action (abuse of administrative proceedings), Defendants are not entitled
3 to the statutory monetary award.

4 **III. ORDER**

5 Therefore, it is hereby **ORDERED** that Defendants' motion to strike/dismiss is
6 **GRANTED** as discussed herein.

7 DATED this 25th day of July, 2011.

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11 BENJAMIN H. SETTLE
12 United States District Judge
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